

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF MISSISSIPPI**

KENDRICK D. SALES, WILLIAM E. WHITE, JR.,
WAYNE TUBBS, JR. THOMAS BROWN,
ADOLFO GARCIA, GUSTAVO HERNANDEZ,
LUIS HERNANDEZ, KENNETH JONES, JOHN LANE, JR.,
GREGORIO LUNA, and HOMERO SANCHEZ

Plaintiffs,

v.

Case No. 14-13318-JDW

JAMES BAILEY,

Adversary Proceeding No. _____

Defendant.

**COMPLAINT OBJECTING TO DISCHARGEABILITY
OF DEBTS AND DISCHARGE OF DEBTOR**

Creditors/Plaintiffs hereby file this adversary complaint objecting, pursuant to 11 U.S.C. § 523(a)(6), to the discharge of debts owed to them by Debtor/Defendant James Bailey (“Defendant” or “Debtor”). In support, Plaintiffs state as follows:

I. JURISDICTION

1. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334, 11 U.S.C. § 523(a), and Bankruptcy Rule 7001. This adversary proceeding is one arising out of the Debtor/Defendant filing a voluntary petition under chapter 13 of the Bankruptcy Code, which is case number 14-13318 pending in the U.S. Bankruptcy Court for the Northern District of Mississippi. This is a core proceeding. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

II. FACTS

2. Creditors/Plaintiffs Kendrick Sales, William E. White, Jr., and Wayne Tubbs, Jr. Thomas Brown, Adolfo Garcia, Gustavo Hernandez, Luis Hernandez, Kenneth Jones, John Lane Jr., Gregorio Luna, and Homero Sanchez ("Plaintiffs"), were previously employed by Debtor/Defendant James Bailey. Having obtained a judgment against Debtor/Defendant in the United States Court for the Northern District of Mississippi, the Plaintiffs are creditors of Debtor/Defendant. A copy of the judgment is attached hereto as Exhibit A.

3. Prior to Debtor/Defendant's bankruptcy filing, the United States District Court for the Northern District of Mississippi determined the Creditors/Plaintiffs were not paid the overtime wages by Debtor/Defendant as required by law and suffered damages as a result. A copy of Judge Aycock's decision is attached hereto as Exhibit B. As the decision reflects, the Debtor/Defendant's failure to pay the Plaintiffs overtime wages was willful, without a good faith basis for believing his actions were in conformity with the law, and was not objectively reasonable. This decision is subject to collateral estoppel and should not be re-litigated. At the time Debtor/Defendant filed for bankruptcy, the only outstanding issue was the amount of attorney's fees and costs to be awarded to Creditors/Plaintiffs' counsel.

4. Debtor/Defendant's failure to pay the Creditors/Plaintiffs overtime wages in accordance with the FLSA was an intentional and wrongful, which caused Creditors/Plaintiffs injury in the form of lost wages. Debtor/Defendant's failure to pay the Plaintiffs overtime wages was done without just cause or excuse. Debtor/Defendant had the clear ability to pay the Plaintiffs the proper wages in accordance with federal law, but chose for personal financial reasons not to.

5. Debtor/Defendant's failure to pay the Plaintiffs properly in accordance with the FLSA caused a willful and malicious injury to them such that the debts owed by Debtor/Defendant to the Plaintiffs including attorneys' fees and costs to which they are entitled under the FLSA. Therefore, pursuant to 11 U.S.C. § 523(a)(6), the Debtor/Defendant is not entitled to a discharge to debts owed to Plaintiffs.

III. PRAYER FOR RELIEF

Wherefore, Creditors/Plaintiffs pray for the Court to enter judgment and an order denying Debtor/Defendant a discharge with respect to the debts owed to the Creditors/Plaintiffs pursuant to 11 U.S.C. § 523(a)(6), as well as any other general relief (including attorney's fees and costs as allowable under the law) that the Court deems just and proper under the law.

Respectfully submitted,

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